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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

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Marketing Orders—Part 964

ORDER NO. 64, REGULATING HANDLING OF DRIED FIGS PRODUCED IN CALIFORNIA

**PART 964—DRIED FIGS PRODUCED IN
CALIFORNIA**

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AUTHORITY: §§ 964.0 to 964.90 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 964.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure effective thereunder (7 CFR, Part 900; 19 F. R. 57), a public hearing was held at Fresno, California, from June 15 to June 18, 1954, both dates inclusive, upon a proposed marketing agreement and a proposed marketing order regulating the handling of dried figs produced in California. Upon the basis of the evidence adduced at such hearing, and the record thereof, it is found that:

(1) This marketing order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) This marketing order regulates the handling of dried figs in the same manner as, and is applicable only to the persons in the respective classes of industrial and commercial activities specified in, the proposed marketing agreement and order upon which a hearing has been held;

(3) This marketing order is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not carry out the declared policy of the act effectively;

(4) There are no differences in the production and marketing of dried figs in the production area covered by the marketing order which would require different terms applicable to different parts of such area; and

(5) The handling of all dried figs produced in California is either in the current of interstate or foreign commerce, or directly burdens obstructs, or affects such commerce. It is hereby recognized, however, that this program will be operated in conjunction with the State of California Marketing Order for Dried Figs as amended July 22, 1953, or as it may be amended thereafter, and that the two programs will complement each other pursuant to the provisions of section 10 (i) of the act.

(b) *Additional findings.* It is hereby found and determined that it is necessary, in the public interest, for the provisions of §§ 964.50 and 964.51 of this order to become effective 40 days after publication in the Federal Register and for the remainder of such order to become effective not later than the date of such publication. The latter is necessary because: (1) The California dried fig industry is now confronted with serious marketing problems which require the earliest practicable application of the provisions of this order in order to effectuate the declared policy of the act; (2) considerable time, estimated at approximately 40 days, will be required for the completion by the Dried Fig Administrative Committee, established under the order as the administrative agency for operations thereunder, and by the Secretary of numerous actions, including the development and approval of operating procedures and other administrative actions, which are necessary to implement the quality control provisions, pursuant to §§ 964.50 and 964.51 of the order, and other provisions thereof; (3) the committee cannot initiate any such actions until it is established under the order; (4) such actions should be initiated, and completed, as soon as practical after the Dried Fig Administrative Committee is established and organized and begins to make preparations for the application of the requisite quality control under §§ 964.50 and 964.51 to govern the handling of dried figs; (5) the committee should have as much time as possible prior to the imposition of regulations upon handlers beginning with the approaching crop year (commencing August 1, 1955) during which it may obtain the benefit of experience in operating under the provisions of the order during the remainder of the initial crop year; and (6) no obligations under the order will be imposed on handlers sooner than 30 days after publication hereof in the Federal Register. On the basis of the foregoing facts and circumstances, good cause exists for making the various provisions of this order effective at the

times hereinafter stated, and it would be contrary to the public interest to postpone the effective date of all provisions of this order until 30 days after publication in the Federal Register (see 5 U. S. C. 1001 et seq.). Therefore, the provisions of this order, except those in §§ 964.50 and 964.51, shall become effective upon publication in the Federal Register, and the provisions in §§ 964.50 and 964.51 shall become effective May 2, 1955.

(c) *Determinations.* It is hereby determined that: (1) The marketing agreement regulating the handling of dried figs produced in California, upon which a public hearing was held at Fresno, California, from June 15 to 18, 1954, both dates inclusive, has been executed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping dried figs covered by this order) who handled not less than 50 percent of the volume of such dried figs covered by this order;

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (August 1, 1953 through July 31, 1954), were engaged within the State of California, in the production of dried figs for market; and

(3) The issuance of this order is favored or approved by producers who participated in a referendum on the question of its approval and who, during the aforesaid representative period, produced for market at least two-thirds of the volume of dried figs represented in such referendum and produced within the State of California for market.

It is therefore ordered, That, on and after the effective date hereof, the handling of dried figs produced in California shall be in conformity to, and in compliance with, the terms and conditions of this order; and the terms and conditions of said order are as follows:

DEFINITIONS

§ 964.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 964.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

§ 964.3 *Person.* "Person" means an individual, partnership, corporation, association or any other business unit.

§ 964.4 *Natural condition dried figs.* "Natural condition dried figs" means and includes all figs produced in California which have been dried, either by sun-drying or artificial dehydration, to the extent necessary to inhibit rapid spoilage by fermentation, mold, souring or like cause and which have not been processed.

§ 964.5 *Processed dried figs.* "Processed dried figs" means all dried figs which have been cleaned, or treated with water or steam, or otherwise treated in preparation for market by a handler: *Provided,* That dried figs shall not become processed dried figs at the time they are cleaned by a producer in the course of preparing them for delivery to a producer or handler.

§ 964.6 *Dried figs.* "Dried figs" means and includes all natural condition dried figs and all processed dried figs produced in California.

§ 964.7 *Variety.* "Variety" means dried figs of any one of the following kinds: Kadota, Calimyrna, Black Mission, Adriatic, or any kind or strain similar or related thereto.

§ 964.8 *Acquire.* "Acquire" means to obtain physical possession by purchase, storage arrangement, or otherwise, of natural condition dried figs as the first handler thereof.

§ 964.9 *Producer.* "Producer" means any person engaged in a proprietary capacity in the business of producing or causing to be produced for market natural condition dried figs as herein defined and for the purpose of this part shall also include a dry yard operator and any other person who buys or receives figs, dried or otherwise, for the purpose of drying, curing, sorting, or otherwise preparing natural condition dried figs for his own account.

§ 964.10 *Handler.* "Handler" means any person who acquires natural condition dried figs, processes, packages, sells, consigns, transports, ships or in any other way places dried figs in the current of commerce (except as a carrier of dried figs owned by another person), whatever may be the ultimate destination or end use of the dried figs, provided that the term handler shall not include the following persons when dealing with dried figs in the following manner: (a) Any producer selling or delivering natural condition dried figs to another producer, or to a handler within the State of California; (b) any producer receiving or obtaining natural condition dried figs from another producer; (c) any person engaging in the further handling of processed dried figs which have previously been inspected and certificated as processed dried figs pursuant to the provisions of this part and which have been shipped or otherwise finally disposed of by a handler; (d) any person engaging in manufacturing from dried figs, by-products thereof which are not used for human consumption; (e) any person converting dried figs into distilled spirits; and (f) the State of California, the Dried Fig Advisory Board and its agents and such persons as may obtain dried figs from them in carrying out the functions of the State of California Marketing Order for Dried Figs, as Amended.

§ 964.11 *Handle.* "Handle" means to perform one or more of the functions of a handler.

§ 964.12 *Crop year.* "Crop year" means the 12-month period beginning August 1 of any year and ending July 31 of the following year: *Provided,* That the

first crop year shall begin at the effective time of this subpart.

§ 964.13 *Part and subpart.* "Part" means the order regulating the handling of dried figs produced in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of dried figs produced in California shall be a "subpart" of such part.

DRIED FIG ADMINISTRATIVE COMMITTEE

§ 964.20 *Establishment of Dried Fig Administrative Committee.* A Dried Fig Administrative Committee, hereafter referred to as the committee, consisting of 10 members with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom, with their respective alternates, five shall represent producers and five shall represent handlers. The committee may nominate and recommend for appointment an eleventh member of the committee who need not be a producer nor a handler. There shall be an alternate member for each member of the committee except the eleventh member.

§ 964.21 *Selection of members of the committee—(a) Initial members.* The initial producer and handler members of the committee and their respective alternates shall be the same as the producer and handler members and their respective alternates of the Dried Fig Advisory Board under the Marketing Order for Dried Figs, as Amended, established under the provisions of the California Marketing Act of 1937, as Amended, who are serving in such capacities at the effective time hereof, including the eleventh member of such Dried Fig Advisory Board if there be such an eleventh member. The initial 10 members of the committee and their respective alternates shall hold office for a term ending May 31, 1955 and until their successors shall be selected and shall qualify. The eleventh member, if any, shall hold office for a term ending May 31, 1955.

(b) *Term of office of successor members.* The successors of the 10 original members and their respective alternates shall be selected annually by the Secretary for a term of one year beginning June 1 and shall serve until their respective successors shall be selected and shall qualify; and in the event the committee shall nominate an eleventh member he may be selected by the Secretary for the balance of such year.

(c) *Selection of successor members.* Selection of the 10 successor members of the committee, and their respective alternates, shall be made by the Secretary, for the producer and handler groups from the nominations submitted for that purpose by those groups, or from among other qualified persons, in the discretion of the Secretary, but such selections shall be made upon the basis of the representation provided for in §§ 964.22, 964.23, and 964.25.

§ 964.22 *Eligibility.* Each producer member and alternate producer member of the committee shall be during his term of office a producer in the district from which he is appointed and a major

portion of his income from or interest in the dried fig industry shall be as a producer. Each handler member and alternate handler member of the committee shall be either a handler of dried figs or an employee or agent of a handler of dried figs actually engaged in the handling of dried figs while he is such member or alternate member, and whose primary interest in the dried fig industry is that of a handler.

§ 964.23 *Producer representation.* Producer representation on the committee shall be by districts as described in this section or as such districts may be changed by recommendation of the committee with the approval of the Secretary to maintain equitable representation based on production. District No. 1 shall have two members and two alternate members and shall include all of the area of California north of the northern boundaries of Monterey, San Benito, Fresno and Inyo Counties. District No. 2 shall have three members and three alternate members and shall include the counties of Monterey, San Benito, Fresno and Inyo and all counties south thereof.

§ 964.24 *Nomination of successors to initial producer members of the committee—(a) Nomination meetings.* Nominations for producer members and alternate producer members of the committee subsequent to the initial members and alternates, shall be made at a meeting or meetings of producers held in each of the foregoing districts. Such meetings shall be called by the committee at such times and at such places within such districts as the committee shall designate, prior to May 1 of each year. The producers at each of such meetings shall select a chairman and secretary therefor. After nominations have been made, the committee shall transmit forthwith to the Secretary its certificate showing the name of each person for whom votes have been cast, whether as a member or as alternate for a member, and the number of votes received by each such person.

(b) *Producer voting in nomination meetings.* In the nomination of producer members and alternate producer members of the committee, each producer shall be entitled to cast one vote for each member position and one vote for each alternate member position in the district in which he produces dried figs. Only producers who are personally present at such nomination meetings shall be entitled to vote for nominees. Each producer shall be entitled to vote only in one district and only for the nominees to be elected in such district.

§ 964.25 *Handler representation.* Handler representation on the committee may be without regard to districts but insofar as may be practical shall be representative of handlers generally.

§ 964.26 *Nomination of successors to initial handler members.* The committee shall cause to be held each year prior to May 1, a meeting or meetings of handlers affected by this part for the purpose of obtaining nominations of persons to serve as handler members and alternate members of the committee.

§ 964.27 *Failure to nominate.* In the event nominations for any positions on the committee except that of the eleventh member, are not received by May 5, the Secretary may select such members and their alternates without regard to nominations but each such selection shall be on the applicable basis prescribed in §§ 964.22, 964.23, and 964.25.

§ 964.28 *Acceptance.* Each person selected as a member or alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 15 days after receiving notice of his selection.

§ 964.29 *Alternates.* An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate (a) during his absence, or (b) in the event of his removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

§ 964.30 *Vacancies.* In the event of any vacancy occasioned by the failure of any person selected as a member or alternate member of the committee to qualify or by the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated within 60 calendar days after such vacancy occurs and selected in the manner provided in this subpart insofar as applicable.

§ 964.31 *Obligations.* Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member of the committee, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

§ 964.32 *Compensation and expenses.* Members of the committee and alternate members when acting as members shall serve without compensation but shall be allowed their necessary expenses as approved by the committee.

§ 964.33 *Powers.* The committee shall have the following powers:

(a) To administer the terms and provisions of this subpart;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 964.34 *Procedure—(a) Organization.* The committee shall select a chairman from among its members and such other officers as may be appropriate from its membership or employees. Whenever an eleventh member has been nominated by the committee and appointed by the Secretary such eleventh member shall act as chairman of the committee.

(b) *Quorum.* Not less than seven members, including alternate members acting in the place and stead of members, shall constitute a quorum of the committee.

(c) *Voting requirements.* No action shall be taken by the committee including the nomination of an eleventh member unless a quorum is present and a concurring vote of not less than three producer members and three handler members, or alternate members acting in the place and stead of members, is obtained: *Provided, however,* That any recommendation to establish volume regulation under § 964.55 of this subpart shall require the concurring vote of not less than four producer members and four handler members, or alternate members acting in the place and stead of members.

§ 964.35 *Duties.* The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, or handler;

(b) To keep minutes, books and other records which shall clearly reflect all of the acts and transactions of the committee and subcommittees and such minutes, books and other records shall be subject to examination by the Secretary at any time;

(c) To make scientific and other studies and assemble data on the producing, handling, shipping, and marketing conditions relative to figs and dried figs which are necessary in connection with the performance of its official duties;

(d) To adopt such rules and regulations for the conduct of the business of the committee as it may deem advisable;

(e) To appoint or employ such persons as it may deem necessary and to determine the salaries and define the duties of such persons;

(f) To submit to the Secretary not later than July 17 of each year a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year and the supporting data therefor, except that such submission for the first crop year shall be made as soon as practicable after the effective time of this subpart.

(g) To submit to the Secretary such available information with respect to figs and dried figs as the committee may deem appropriate or as the Secretary may request;

(h) To prepare and submit to the Secretary statements of the financial operations of the committee exclusive of surplus control operations at such times as the committee may deem appropriate or as the Secretary may request, and to make such statements together with the minutes of the meetings of said committee available for inspection at the offices

of the committee by producers and handlers;

(i) To prepare and submit to the Secretary annually as soon as practicable after the end of each crop year and such other times as the committee may deem appropriate or the Secretary may request a statement of the financial operations of the committee with respect to the surplus control for such crop year and to make such statement available at the offices of the committee for inspection by producers and handlers;

(j) To cause the books of the committee to be audited by a certified public accountant at least once each crop year and at such other times as the committee may deem necessary or as the Secretary may request. Such report shall show among other things, the receipt and expenditure of funds. At least two copies of such audit report shall be submitted to the Secretary. A copy of each such report shall be available at the offices of the committee for inspection by producers and handlers.

(k) To give the Secretary the same notice of meetings of the committee and subcommittees as is given to the members of the committee or subcommittees;

(l) To give producers and handlers reasonable advance notice of meetings of the committee and to maintain all such meetings open to such persons;

(m) To investigate compliance with the provisions of this subpart and with any rules and regulations established pursuant thereto; and

(n) To establish with the approval of the Secretary such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

MARKETING POLICY

§ 964.40 *Report of marketing policy.* Prior to the beginning of each crop year, the committee shall prepare and submit to the Secretary a report setting forth its marketing policy for the regulation of the handling of dried figs in such crop year. Such report shall include the data and information used by the committee in the formulation of such marketing policy. In developing the marketing policy, the committee shall give consideration to the following factors:

(a) The estimated tonnage of dried figs by variety from preceding crop years held by handlers;

(b) The estimated tonnage of dried figs by variety from preceding crop years held by producers;

(c) The estimated production of dried figs by variety in such crop year;

(d) An appraisal of the quality and size of dried figs by variety of the crop to be produced in such crop year;

(e) The estimated tonnage of dried figs marketed in recent crop years segregated by countries as to foreign commerce and segregated by uses as to domestic commerce;

(f) The current prices being received for dried figs by producers and handlers;

(g) The trend and level of consumer income;

(h) The estimated probable market requirements for dried figs in such crop year in domestic commerce segregated by uses and in foreign commerce, segregated by countries; and

(i) Such other factors as may have a bearing on the marketing of dried figs.

§ 964.41 *Policy meeting.* The committee shall hold a meeting for the purpose of formulating and adopting the marketing policy for any crop year not later than July 12 preceding the beginning of such crop year, except that the meeting for the first crop year shall be held as soon as practicable after the effective time of this subpart.

§ 964.42 *Time of submission.* The marketing policy report for any crop year shall be submitted to the Secretary as promptly as possible after the policy meeting and in no event later than July 17 preceding the beginning of such crop year, except that the submission for the first crop year shall be as soon as practicable after the effective time of this subpart.

§ 964.43 *Modification or change.* In the event the committee subsequently determines that such marketing policy should be modified or changed by reason of change in economic or other conditions, it shall make such modification or change in the manner provided for above for the original formulation of a marketing policy, insofar as applicable, and shall submit promptly a report of such modified or changed marketing policy to the Secretary, along with the data which it considered in connection with the making of such modification or change.

§ 964.44 *Publicity.* The committee shall promptly give reasonable publicity to producers and handlers of the contents of each marketing policy report submitted to the Secretary and of each report modifying or changing a marketing policy. Such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media. Copies of all such reports shall be maintained in the offices of the committee where they shall be available for examination by producers and handlers.

QUALITY CONTROL

§ 964.50 *Receiving of natural condition dried figs by handlers—(a) General.* In order to effectuate the declared policy of the act, no handler shall acquire natural condition dried figs except in accordance with the provisions of this section.

(b) *Initial regulation.* As of the effective time of this subpart, and continuing until such regulation is superseded by other regulations prescribed by the Secretary, no handler shall acquire natural condition dried figs unless they meet the minimum standards for natural condition dried figs as set forth in § 964.90 (Exhibit A).

(c) *Superseding regulation.* In case the committee should recommend to the Secretary that the initial minimum standards as to quality, as provided for in paragraph (b) of this section, should be superseded by other minimum stand-

ards as to quality, it shall submit its recommendations to the Secretary, together with the data and information upon which it acted in making such recommendation, and such other information as the Secretary may request. The Secretary shall issue such superseding regulation if he finds, upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act. Any superseding regulations may be by variety, shall provide a maximum tolerance for total defects, and may provide a maximum tolerance for single defects or classes of defects. Any superseding regulations issued by the Secretary shall subsequently be modified, suspended, or terminated, in case he finds that the pertinent facts and circumstances so warrant; and the committee, in submitting any recommendation therefor to the Secretary, shall, in each instance, submit to him the information and data on the basis of which such recommendation is made. The committee shall give prompt publicity through newspapers having general circulation in the area and may give notice through other channels, if the committee deems it desirable, to handlers and producers of each recommendation submitted by it to the Secretary and of each superseding regulation issued by the Secretary. Notice of each regulation issued shall include, but not be limited to, written notice by registered mail to all handlers of whom the committee has a record.

(d) *Inspection.* (1) Each handler shall cause an inspection to be made of each lot of natural condition dried figs tendered to him. Prior to acquiring such dried figs, each handler shall obtain a certificate that the dried figs meet the minimum standards for passable dried figs as established pursuant to the provisions of paragraph (b) or (c) of this section, and said handler shall submit or cause to be submitted to the committee such certificate, together with such other instruments and records as the committee may require. Such certificates shall be issued by inspectors of the Dried Fruit Association of California, or such other inspection agency as may be recommended by the committee and designated by the Secretary. Each lot of dried figs so certificated as meeting the applicable requirements shall be known and referred to as passable dried figs. The cost of inspection and certification of such passable dried figs shall be borne by the handler.

(2) For purposes of inspection, natural condition dried figs shall be sampled on a handler's premises in accordance with the rules and procedures established pursuant to the provisions of this subpart. Each lot of natural condition dried figs tendered to a handler shall be under the jurisdiction of the committee from the time of delivery thereof until inspection results are available. No handler may acquire natural condition dried figs failing to meet the minimum standards of quality, and no handler may return or transfer to any producer any natural condition dried

figs that have been certificated as meeting minimum standards of quality.

§ 964.51 *Regulation of the handling of dried figs subsequent to their acquisition by handlers*—(a) *General*. In order to effectuate the declared policy of the act, no handler shall ship or otherwise make final disposition of natural condition dried figs or of processed dried figs, except in accordance with the terms and conditions of this section.

(b) *Initial regulation*. As of the effective time of this subpart, and continuing until such regulation is superseded by other regulations prescribed by the Secretary, except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of dried figs which fail to meet the applicable minimum standards set forth in § 964.90 (Exhibit A).

(c) *Superseding regulation*. In case the committee should recommend to the Secretary that the initial minimum standards as to quality, as provided for in paragraph (b) of this section should be superseded by other minimum standards as to quality, it shall submit its recommendation to the Secretary, together with the data and information upon which it acted in making such recommendation, and such other information as the Secretary may request. The Secretary shall issue such superseding regulation if he finds, upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act. Any superseding regulations may be by variety, shall not be below the applicable minimum standards for dried figs, as set forth in § 964.90 (c) of Exhibit A, and any such minimum standards for quality shall provide a maximum tolerance for total defects, and may provide a maximum tolerance for single defects or classes of defects. Any superseding regulations issued by the Secretary shall subsequently be modified, suspended, or terminated in case he finds that the pertinent facts and circumstances so warrant; and the committee in submitting any recommendation therefor to the Secretary shall, in each instance, submit to him the information and data on the basis of which such recommendation is made. The committee shall give prompt publicity through newspapers having general circulation in the area and may give notice through other channels, if the committee deems it desirable, to handlers and producers of each recommendation submitted by it to the Secretary and of each superseding regulation issued by the Secretary. Notice of each regulation issued shall include, but not be limited to, written notice by registered mail to all handlers of whom the committee has a record.

(d) *Inspection*. Each handler shall at his own expense, before shipping or otherwise making final disposition of dried figs, unless such figs are specifically excepted in this section, cause an inspection to be made of such dried figs to determine whether they meet the then applicable quality standards for dried figs. No handler shall ship or otherwise make final disposition of such figs for

any use, unless they are specifically excepted in this section, if they do not meet such minimum standards. Each handler shall obtain a certificate that such dried figs meet the aforementioned minimum standards and shall submit or cause to be submitted to the committee such certificate, together with such other instruments and records as the committee may require. Such certificates shall be issued by inspectors of the Dried Fruit Association of California, or such other inspection agency as may be recommended by the committee and designated by the Secretary.

(e) *Exceptions to restrictions*—(1) *Interplant and inter-handler transfers*. Notwithstanding the restrictions contained in paragraphs (b) or (c) of this section, any handler may transfer dried figs from one plant owned by him to another plant owned by him within the State of California without having an inspection made as provided for in paragraph (d) of this section, and any handler may ship dried figs from his plant to another handler's plant within the State of California without having an inspection made as provided for in paragraph (d) of this section. A report of such inter-handler transfer shall be made promptly to the committee by the transferring handler. The receiving handler shall, before shipping or otherwise making final disposition of such dried figs, comply with the requirements of this section.

(2) *Defective dried figs*. Any defective dried figs which may be accumulated by a handler by removing them from his passable dried figs, and any dried figs acquired by a handler which fail to meet the quality standards for shipment or final disposition as dried figs, may be disposed of or marketed for disposition as animal feed, or as other dried fig products in which they are used in channels other than for human consumption. The committee shall issue any such rules and procedures as may be necessary to insure such uses.

(3) *Export shipments*. Dried figs however processed being prepared for export, except to Canada, outside of the continental limits of the United States and its possessions and territories are exempt from the quality inspection and certification requirements of this section. Handlers preparing dried figs or dried fig products for such exempted export markets shall observe rules and procedures established pursuant to the provisions of this subpart.

§ 964.52 *Above parity situations*. The provisions hereof relating to minimum standards of quality and inspection requirements, within the meaning of section 2 (3) of the act, and any other provisions pertaining to the administration and enforcement thereof, shall continue in effect irrespective of whether the season average price to producers for dried figs is in excess of the parity level specified in section 2 (1) of the act.

VOLUME REGULATION

§ 964.55 *Recommendations for designation of percentages*—(a) *Committee determinations*. If the committee concludes that the supply of and demand for any variety or varieties of dried figs

make it advisable to designate the percentages of such dried figs acquired by handlers in any crop year which shall be salable and which shall be surplus, it shall recommend such percentages to the Secretary. With any recommendation respecting percentages, the committee shall also submit the information on the basis of which such recommendation was made. In the event the committee subsequently deems it desirable to modify, suspend, or terminate any such percentages, it shall submit to the Secretary its recommendation in that regard together with the information on the basis of which such modification, suspension, or termination is recommended.

(b) *Pertinent considerations*. In determining any recommendation referred to in paragraph (a) of this section, the committee shall consider and analyze the following pertinent estimated factors:

(1) The supply of dried figs, comprising any carryovers of dried figs from preceding crop years held by producers and handlers and the tonnage of dried figs to be produced in the crop year under consideration;

(2) The trade demand during the crop year for dried figs in normal market channels, both domestic and foreign;

(3) The current prices being received for dried figs by producers and handlers;

(4) The trend and level of consumer income;

(5) Present and prospective price trends for dried figs;

(6) Other pertinent economic and marketing factors relative to dried figs; and

(7) If the committee recommends volume regulation by variety, the information insofar as possible shall be furnished by variety.

(c) *Notice*. The committee shall give reasonable advance notice to producers and handlers of each meeting to consider the recommendation of the percentages to be fixed pursuant to paragraph (a) of this section, or any recommendation to modify, suspend, or terminate such percentages, and each such meeting shall be open to them. Such notice shall be given through publicity in newspapers having general circulation in the area, and may be given through other channels, if the committee deems it desirable. The committee also shall give similar notice to producers and handlers of all such recommendations submitted to the Secretary.

(d) *Filing of recommendation with the Secretary*. The original recommendation by the committee as to percentages with respect to any crop year shall be filed with the Secretary at the same time it submits its marketing policy report.

§ 964.56 *Regulation by the Secretary*—

(a) *Designation of percentages*. Whenever the Secretary finds from the recommendation and supporting information supplied by the committee, or from any other available information, that to designate by variety or otherwise the percentages of natural condition dried figs acquired by handlers during any crop year which shall be salable tonnage, and surplus tonnage, respectively, would

tend to effectuate the declared policy of the act, he shall so designate the percentages of such dried figs acquired by handlers during such crop year which shall be salable tonnage, and surplus tonnage, respectively. In the event the Secretary subsequently finds from the recommendations and supporting information supplied by the committee, or from any other available information, that modification, suspension, or termination of any such regulation will tend to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such regulation.

(b) *Notice.* The Secretary shall notify the committee promptly of each such percentage so fixed. The committee, in turn, shall give prompt notice thereof to producers and handlers, including, but not necessarily limited to, written notice by registered mail to each handler of whom the committee has a record.

§ 964.57 *Surplus tonnage of dried figs generally—*(a) *General requirement.* Surplus tonnage acquired by each handler shall be held by him for the account of the committee, and subject to the applicable restrictions of this subpart.

(b) *Holding and delivery.* Each handler shall hold in storage all surplus tonnage acquired by him until he has been relieved of such responsibility by the committee, either by delivery to the committee, or otherwise. Such handler shall store such surplus tonnage in such a manner as will maintain the dried figs in the same condition as when he acquired them, except for normal and natural deterioration and shrinkage, standards for which may be recommended by the committee and established by the Secretary, and except for loss through fire, acts of God, force majeure, or other conditions beyond the handler's control. The committee may, after giving reasonable notice, require a handler to deliver to it, or any one designated by it, at such handler's warehouse or at such other place as the dried figs may be stored, part, or all of the surplus dried figs held by him. The committee may require that such delivery consist of natural condition dried figs, or it may arrange for such delivery to consist of processed dried figs.

(c) *Surplus obligation and deferment thereof.* Each handler shall have in his possession, or under his control, at all times, a quantity of dried figs, by variety, equal to the quantity of surplus tonnage referable to his acquisitions of dried figs less any quantity of such surplus tonnage delivered by him pursuant to instructions of the committee and any quantity of such tonnage acquired by him but subsequently sold to him by the committee: *Provided*, That the committee may defer, upon the written request of any handler and for good and sufficient cause, the meeting by such handler of such requirement for a specified period ending not later than December 15 of the particular crop year. As a condition to the granting of any such deferment, the committee shall require the handler to obtain and file with it a written undertaking that by the end of the deferment period he will have fully satisfied his obligations with respect to the holding or control by him

of the surplus tonnage applicable to his acquisitions of dried figs. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee, running in favor of the committee and the Secretary, and for an amount computed on the basis of the then current market value of natural condition dried figs, as determined by the committee, for the quantity for which the deferment is granted. The cost of such bond shall be borne by the handler filing same. Any sums collected through default of a handler on his bond shall, after reimbursement of the committee for any expense incurred by it in effecting collection, be deposited with the funds obtained by it from the disposition of the surplus pool and disbursed by it to producers as set forth in § 964.58 (j). In addition to the foregoing, the committee may establish other reasonable and necessary terms and conditions upon which such deferments may be granted.

(d) *Quality requirements.* Surplus tonnage delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition dried figs or processed dried figs shall meet the minimum standards provided in §§ 964.50 or 964.51 unless otherwise specified by the committee. Different minimum standard requirements may be established by the committee for individual varieties delivered to the committee from the surplus tonnage.

(e) *Payment for services.* Handlers shall be compensated for receiving, storing, and handling surplus tonnage held by them for the account of the committee, in accordance with a schedule of payments established by the committee and approved by the Secretary.

(f) *Loans.* The committee may hypothecate binding written contracts for the sale of surplus dried figs, for the purpose of obtaining funds for the distribution of net proceeds from the disposition of surplus tonnage dried figs in accordance with the provisions of paragraph (j) of § 964.58: *Provided*, That there are included in, and made a part of, the loan agreement in connection with each such loan the following terms and conditions:

(1) The recourse of the lender shall be confined to the particular sales contract, or the proceeds which are derived therefrom; (2) neither the Secretary, the committee, any of the committee's members, alternate members, officers, employees, and agents, nor any distributees as such (including their respective officers and employees) of the loan proceeds, shall be liable for the repayment, either in whole or in part, of the particular loan; and (3) the lender waives any right which he might otherwise have, in case of default in payment, to obtain either possession or control of the surplus dried figs involved. The proceeds of any such loan, after deducting a reasonable amount to help defray the surplus pool operation expenses, shall be distributed by the committee to the respective producers, or their successors in interest, on the basis of the volumes of their respective contributions to the pooled dried figs of each variety on which the loan is obtained.

§ 964.58 *Disposition of surplus tonnage—*(a) *Handler's pro rata shares.* In the event the committee offers surplus tonnage dried figs to handlers for purchase, or for contract processing or packing, each handler shall, insofar as practicable, be given the first opportunity to purchase or process or pack his share of the offer, which share shall be determined as the same proportion that the respective surplus tonnage received by him is of the surplus tonnage received by all handlers: *Provided*, That any surplus tonnage for which a deferment has been granted to a handler pursuant to the provisions of and as authorized in § 964.57 (c) shall be included in his receipts of surplus tonnage in determining his share: *And provided further*, That any inequities resulting from this method may be corrected by the committee. In the event that any handler declines or fails to purchase or contract for processing or packing any or all of his share of any such offer, the remaining portion thereof shall be reoffered by the committee to all handlers who purchased or contracted for processing or packing all of their respective shares of such offer, in proportion to their respective shares. Any quantity of surplus tonnage remaining unsold or not contracted for processing or packing after a reoffer shall be withdrawn from the particular offer, but may be sold or contracted to any handler or handlers notifying the committee of his or their desire to purchase or contract same.

(b) *Sales to the United States Government and foreign governments.* The committee is authorized to sell direct, or to sell to handlers for resale, surplus tonnage to the United States Government or to any agency thereof (including, but not limited to, sales for domestic or foreign relief purposes, school lunch and institutional feeding, or for foreign economic assistance), or to any foreign government.

(c) *Sales for animal feed, certain manufacturing uses and export.* The committee may sell direct, or sell to handlers for resale, any surplus dried figs for animal feed, botanicals, distillation, or for any manufacturing uses or for export which were not provided for in estimating the salable quantity of dried figs for the then current crop year. The committee is hereby authorized to exercise such supervision as may be reasonably necessary to insure that such figs are disposed of for the respective uses for which they are sold.

(d) *Sales to handlers under specified supply conditions—*(1) *Authorization.* If the committee finds that total contracted sales by all handlers during the crop year exceeds 80 percent of the total salable tonnage received by all handlers plus 80 percent of the estimated tonnage held unsold by producers which would become salable tonnage; or, if the committee finds that more than 20 percent of the uncontracted salable tonnage is being held so tightly by relatively few handlers or producers, as seriously to restrict commerce in dried figs, and if 75 percent of all handlers have made a written request therefor and such requesting handlers have purchased over 65 percent of the salable tonnage purchased from producers, the committee

shall, in either event, offer to sell to handlers surplus dried figs from the surplus tonnage for use as salable tonnage.

(2) *Commencement date.* No such offer shall be made prior to December 15 of the crop year.

(3) *Quantity limitations.* No single sales offer of surplus tonnage to handlers shall be so excessive as to quantity that it obviously would disrupt orderly marketing conditions for the salable tonnage.

(4) *Handlers' pro rata shares.* In any offer by the committee to sell surplus tonnage to handlers pursuant to this paragraph the method for such sales shall be the same as that prescribed in paragraph (a) of this section.

(5) *Withdrawal of offer.* Any offer to sell surplus tonnage to handlers outstanding as of July 5 of any crop year shall be withdrawn and the committee shall not make any further offer to sell surplus tonnage to handlers after that date except that if the committee determines, with the approval of the Secretary, that a major change in conditions has occurred, such as the involvement of the United States in war or a serious crop shortage or a crop failure in the following year, or any other significant development which indicates a shortage of supply, the said July 5 limitation shall no longer apply.

(e) *Notice to Secretary of proposed sales of surplus.* The committee shall file with the Secretary, by telegram or air mail letter, prior to making any offer to sell surplus dried figs pursuant to this section, complete information with respect thereto, including the bases therefor. The Secretary shall have the right to disapprove, within seven days after he receives such information, the making of such an offer or any term or condition thereof.

(f) *Prices.* No sale of surplus dried figs shall be made by the committee at a price below that which reflects the weighted average price received by producers for salable tonnage of the particular variety during the then current crop year to a date as near as practicable to the date of the offer, as shown by the reports to be filed under the provisions of § 964.62 plus accrued charges for receiving, handling and storing surplus tonnage: *Provided*, That the committee may sell surplus dried figs at negotiated prices for the purposes and under the conditions specified in paragraphs (b), (c) and (h) of § 964.58 of this subpart.

(g) *Donations of surplus dried figs.* The committee may donate quantities of surplus dried figs for use in research or promotional activities.

(h) *Unsold surplus tonnage.* The committee shall endeavor to sell all dried figs in the surplus tonnage at a rate so as to achieve as nearly as may be practicable, the complete disposition of the surplus tonnage not later than July 31 of the crop year. Any surplus tonnage unsold as of July 31 shall be disposed of as soon as practicable for animal feed, distillation, or in any other outlets which are not competitive with the sale of dried figs in normal marketing channels, unless determination with respect to a shortage of supply has been made as provided for in paragraph (d) (5) of this section. The committee may dispose of

unsold surplus dried figs after July 31 at negotiated prices.

(i) *Charges against sales proceeds of surplus tonnage.* Expenses incurred by the committee in receiving, handling, holding, or disposing of surplus tonnage shall be charged against the proceeds of sales of surplus tonnage.

(j) *Distribution of net proceeds.* Net proceeds from the disposition of surplus tonnage shall be distributed by the committee either directly, or through handlers as agents of the committee, under safeguards to be established by the committee, to the respective producers or to their successors in interest on the basis of their respective contributions to the surplus tonnage with appropriate quality or varietal differentials as may be established by the committee. Progress payments may be made by the committee in the same manner, as sufficient funds accumulate. Prior to making any such distribution, the committee shall submit to the Secretary a report including all pertinent details with respect thereto. The Secretary shall have the right to disapprove, within seven calendar days after he receives such information the making of such a disbursement or any term or condition thereof.

REPORTS AND RECORDS

§ 964.60 *Report of carryover.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, by varieties, of all natural condition dried figs and processed dried figs, separately, which were held by him on January 31 and July 31 of any crop year, which report shall show the quantity of each variety, and the locations thereof.

§ 964.61 *Acquisition reports.* In the event a surplus percentage is established for any crop year, each handler shall file with the committee, on request, a certified report showing, with respect to his acquisitions of each variety of dried figs during the period covered by such report: (a) The surplus tonnages referable to his acquisitions; and (b) the locations of those surplus tonnages. Each such report shall be filed in such manner and at such times as the committee may designate. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, the name and address of each person from whom he acquired dried figs and the quantity of each variety of dried figs acquired from each such person.

§ 964.62 *Reports of prices.* Each handler shall file with the committee such price reports as may be requested by the committee, showing the weighted average price paid by such handlers to producers for each variety of dried figs and the quantity purchased at each such price to enable the committee to determine the weighted average price received by producers for the purposes set forth in § 964.58 (f).

§ 964.63 *Other reports.* Upon the request of the committee each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this subpart.

§ 964.64 *Confidential information.* All reports and records furnished or submitted by a handler to the committee shall be received by and at all times kept under the custody or control of one or more employees of the committee, who shall disclose to no person, except the Secretary upon request therefor, data or information obtained or extracted therefrom which would constitute a trade secret or the disclosure of which might affect the trade position, financial condition, or business operations of the particular handler from whom received: *Provided*, That the committee may require such an employee to disclose to it, or to any person designated by it or by the Secretary, information and data of a general nature, compilations of data affecting handlers as a group and any data affecting one or more handlers, so long as the identities of the individual handlers involved are not disclosed.

§ 964.65 *Records.* Each handler shall maintain such records of all dried figs handled by him as prescribed by the committee. Such records shall include, but not necessarily be limited to, the quantity of dried figs of each variety acquired from each person and the name and address of each such person, total acquisitions, total sales, and total other disposition of each variety which he handles.

§ 964.66 *Verification of reports.* For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises and shall be permitted to inspect such premises and any dried figs held by such handler, and any and all records of the handler with respect to the acquisition, holding or disposition of dried figs by him. Each handler shall furnish all labor and equipment necessary to make such examinations at no expense to the committee. Each handler shall store dried figs in a manner which will facilitate examination and shall maintain storage records which will permit accurate identification of dried figs held by him or disposed of thereof. Insofar as is practicable and consistent with the carrying out of the provisions of this subpart, all data and information obtained or received through checking and verification of reports shall be treated as confidential information.

EXPENSES AND ASSESSMENTS

§ 964.70 *Expenses.* The committee is authorized to incur such expenses (exclusive of expenses for the receiving, handling, holding or disposing of any quantity of surplus tonnage) as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the committee as to these expenses and the recommended rate of assessment for each such crop year together with all data supporting such recommendations, shall be filed with the Secretary not later than July 17 preceding the crop year in connection with which

such recommendations are made, except that such submission for the first crop year shall be made as soon as practicable after the effective time of this subpart.

§ 964.71 *Assessments*—(a) *Requirement for payment and rate of assessment.* The funds to cover the expenses of the committee (exclusive of expenses for the receiving, handling, holding, or disposing of any quantity of surplus tonnage) shall be obtained by levying assessments. Each handler shall pay to the committee, upon demand, with respect to all salable tonnage dried figs handled by him as the first handler thereof and on all dried figs sold to him from surplus tonnage for resale, his pro rata share of such expenses which the Secretary finds will be incurred as aforesaid, by the committee during each crop year. Each handler's pro rata share of such expenses shall be equal to the ratio between the total salable tonnage of dried figs handled by him as the first handler thereof plus the tonnage sold to him from surplus tonnage for resale during the applicable crop year, and the total salable tonnage dried figs handled by all handlers as the first handlers thereof plus the tonnage sold to such handlers from surplus tonnage for resale, during the same crop year. The Secretary shall fix the rate of assessment to be paid by such handlers on the basis of a specified rate per ton. At any time during or after a crop year the Secretary may increase the rate of assessment to apply to all salable tonnage dried figs handled by handlers as the first handlers thereof and on all tonnage sold to handlers from surplus tonnage for resale during such crop year to obtain sufficient funds to cover the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. The Secretary shall reduce the assessment rate applicable to all such tonnage of the particular crop year if he finds that when thus reduced it will provide funds sufficient to enable the committee properly to perform its functions under this subpart. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Advance payments.* In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Use and refund of excess funds from assessments.* Any money collected as assessments during any crop year and not expended in connection with the respective crop year's operations hereunder may be used and shall be refunded by the committee in accordance with the provisions hereof. Such excess funds may be used by the committee during the period of five months subsequent to such crop year in paying the expenses of the committee incurred in connection with the new crop year. The committee shall, however, from funds on hand, including assessments collected during the new crop year, distribute or otherwise

make available, within six months after the beginning of the new crop year, the aforesaid excess, as verified by audit, to each handler from whom an assessment was collected, as aforesaid, in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of the assessments paid by all handlers during said previous crop year. Any money collected from assessments hereunder and remaining unexpended in the possession of the committee upon the termination hereof shall be distributed in such manner as the Secretary may direct.

(d) *Suits for collection.* The committee may, with the approval of the Secretary, maintain in its own name, or in the name of its members, a suit against any handler for the collection of such handler's assessment.

§ 964.72 *Funds.* All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes authorized in this subpart and shall be accounted for in the manner provided for in this subpart. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 964.80 *Personal liability.* No member or alternate member of the committee, or any employee, representative, or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 964.81 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

§ 964.82 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 964.83 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 964.84 *Agents*—(a) *Authorization by Secretary.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

(b) *Authorization by committee.* The committee may authorize any person or persons or agency to act as its agent or representative in connection with the provisions of this subpart.

§ 964.85 *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 964.86.

§ 964.86 *Termination or suspension*—(a) *Failure to effectuate policy of act.* The Secretary may, at any time, terminate the provisions of this subpart, by giving at least one day's notice by means of a press release or in any other manner which he may determine. The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions hereof at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of dried figs who during that crop year have been engaged in the production for market of dried figs in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such dried figs produced for market within said State; but such termination shall be effected only if announced on or before July 15 of the then current crop year. The Secretary may, at any time he deems desirable, hold a referendum of producers to determine whether they favor termination of this subpart. However, beginning with 1955, if the Secretary receives a recommendation, adopted by at least a majority vote of the producer members of the committee, requesting the holding of such a referendum, the Secretary shall hold such a referendum: *Provided*, That the Secretary shall not be required to hold such a referendum upon the basis of such a request more than once every two years.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ 964.87 *Procedure upon termination.* Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of the said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees

pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said Committee and upon said joint trustees.

§ 964.88 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 964.89 *Amendments.* Amendments to this subpart may be proposed from time to time, by any person or by the committee, and may be made a part of this subpart by the procedures provided under the act.

§ 964.90 *Exhibit A—Minimum standards for dried figs—*(a) *Defective dried figs* are the individual specimens of dried figs or separate pieces of sliced dried figs which are classified as "insect infested",

"moldy", "sour", "filthy" or "worthless" as set forth under the heading of "Fig Classes" in the bulletin entitled "Fig Testing" dated July 1, 1929 by Burton J. Howard, Food and Drug Administration, United States Department of Agriculture. Such classifications are as follows:

(1) *Insect infested.* Dried figs are regarded as insect infested: (i) If worms or insects or their pupae, dead or alive, are present in the interior of the dried fig, or (ii) if the excreta are distributed in the interior of the dried fig.

(2) *Moldy.* Dried figs are regarded as moldy if the fig shows a moldy or smutty condition in an area equaling or exceeding $\frac{3}{16}$ inch (0.5 cm.).

(3) *Sour.* Dried figs are regarded as sour: (i) If fermented as evidenced by distinct sour taste or odor, or the darkening in color characteristic of fermentation or souring, or (ii) if infested with internal rot (endosepsis).

(4) *Filthy.* Dried figs are regarded as filthy if contaminated with dirt or extraneous matter: (i) Containing extraneous matter or filth pressed into the fig, (ii) containing sand or earthy material, or (iii) showing other evidences of insanitary production or handling.

(5) *Worthless.* Dried figs are regarded as worthless if so immature, woody, or fibrous as to be practically valueless as a food.

(b) *Maximum tolerances for acquisition of natural condition dried figs.* Tolerance allowances for natural condition dried figs shall not exceed the following:

(1) Total defects not to exceed 33 percent, including

(2) Maximum tolerance of 13 percent insect infested figs.

(c) *Maximum tolerances for dried figs for shipment or other final disposition.* Tolerance allowances for such dried figs shall not be in excess of the following:

(1) For dried figs being prepared in the form of package, carton, or bulk (including dried figs for conversion into juice or concentrate), total defective dried figs shall not exceed 10 percent.

(2) For dried figs being prepared as fig paste, or sliced dried figs being prepared as sliced dried figs for manufacture into fig paste: (i) Total defective figs shall not exceed 10 percent including not more than 5 percent of insect infested dried figs, and (ii) No sliced dried figs or fig paste shall contain more than 13 insect heads per 100 grams. Head count tests shall be required only in the cases of such varieties or blends thereof as are set forth in rules and procedures established pursuant to the provisions of this subpart.

Issued at Washington, D. C., this 17th day of March 1955, to be, and become, effective as of the date of the publication hereof in the Federal Register, *Provided*, That the provisions of §§ 964.50 and 964.51 shall be, and become, effective May 2, 1955.

[SEAL]

EARL L. BUTZ,
Assistant Secretary.

